

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JAMES T. DHALLUIN,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-08-216-M
)	
RANDALL G. WORKMAN, Warden,)	
)	
Respondent.)	

ORDER


On April 18, 2008, United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation in this action brought pursuant to 28 U.S.C. § 2254, seeking a writ of habeas corpus. The Magistrate Judge recommended that the petition be dismissed upon filing as a “mixed petition.” Petitioner was advised of his right to object to the Report and Recommendation by May 8, 2008. On May 2, 2008, petitioner filed his objection.

In his objection, petitioner contends the Magistrate Judge erred in finding that Ground One of his petition is unexhausted. Specifically, petitioner asserts the due process claim presented in Ground One was necessarily included within the first proposition of error presented to the Oklahoma Court of Criminal Appeals. However, in his petition for writ of habeas corpus, petitioner states that Ground One was not raised in his direct appeal and twice states that the issue raised in Ground One was not raised in his direct appeal because his appellate attorney refused to investigate and raise this issue. *See* Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody at pre-printed page 6 [docket no. 1]. Having carefully reviewed petitioner’s objection and the Court file, and in light of the clear, unequivocal statements contained in petitioner’s petition for writ of habeas corpus, the Court finds that the Magistrate Judge did not err in finding that Ground One of the petition is unexhausted.

Accordingly, upon de novo review, the Court:

- (1) ADOPTS the Report and Recommendation issued by the Magistrate Judge on April 18, 2008; and
- (2) DISMISSES the petition for writ of habeas corpus upon filing as a “mixed petition.”¹

IT IS SO ORDERED this 24th day of June, 2008.



VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE

¹Because the Court has dismissed the petition as a “mixed petition,” petitioner has the option of returning to state court to exhaust his claims or amending the instant petition to present only his exhausted claims for determination on the merits. Any amended petition shall be filed by July 24, 2008.